

OPEN MEETING ITEM



22

COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

DATE: JUNE 28, 2005
DOCKET NO: W-02860A-05-0184
TO ALL PARTIES:

Arizona Corporation Commission

DOCKETED

JUN 28 2005

DOCKETED BY	<i>RS</i>
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Enclosed please find the recommendation of Administrative Law Judge Jane Rodda. The recommendation has been filed in the form of an Opinion and Order on:

**NACO WATER COMPANY, LLC
(EMERGENCY RATE INCREASE)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 7, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 12, 2005 and JULY 13, 2005

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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Brian C. McNeil
BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

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IN THE MATTER OF THE APPLICATION OF
NACO WATER COMPANY, LLC FOR AN
EMERGENCY RATE INCREASE.

DOCKET NO. W-02860A-05-0184

DECISION NO. _____

OPINION AND ORDER

DATE OF PUBLIC COMMENT:

May 10, 2005

PLACE OF PUBLIC COMMENT:

Naco, Arizona

DATE OF HEARING:

May 17, 2005

PLACE OF HEARING:

Tucson, Arizona

ADMINISTRATIVE LAW JUDGE:

Jane L. Rodda

APPEARANCES:

Bonnie O'Connor, Southwestern Utility
Management, on behalf of Naco Water
Company, LLC;

David Ronald, Staff Attorney Legal
Division, on behalf of the Utilities
Division for the Arizona Corporation
Commission.

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 14, 2005, Naco Water Co. LLC, ("NWC" or "Company") filed an
application for approval of an emergency increase in its rates.

2. Naco is a limited liability company that provides water service to approximately 321
customers in the area of Naco in Cochise County, Arizona.

3. By Procedural Order Dated March 25, 2005, the matter was set for hearing on May 10,

2005, at the Commission's offices in Tucson, Arizona.

4. On March 31, 2005, NWC mailed notice of the hearing to all of its customers.

5. On April 21, 2005, residents of the areas served by NWC filed a Petition signed by approximately 88 individuals requesting that the Commission set a Public Comment meeting in the Naco area.

6. By Procedural Order dated April 25, 2005, the Commission set a public comment meeting on May 10, 2005 in Naco and continued the evidentiary hearing until May 17, 2005, at its offices in Tucson.

7. Eighteen customers attended the public comment meeting which convened at 6:00 p.m. on May 10, 2005, at the Naco Elementary School. Customers who spoke at the meeting were primarily concerned about the size of the potential increase and in improving the Company's system which is very old and in need of constant repair.

8. The Company requested that the Commission approve an increase in revenues of \$44,682 on an emergency basis. The requested increase would be a 27.3 percent increase over current annual revenues.

9. The Company's current and proposed interim rates are as follows:

<u>Monthly Usage Charges</u>	<u>Current Rates</u>	<u>Proposed Rates</u>
5/8" x 3/4 " Meter	\$16.43	\$24.00
1" Meter	\$31.48	\$35.00
1 1/2 " Meter	\$41.43	\$45.00
2" Meter	\$48.43	\$54.00
<u>Commodity Charge – per 1,000 gallons</u>		
0-10,000 gallons	\$2.83	\$3.50
Over 10,000 gallons	\$4.18	\$4.80

10. NWC's current rates were authorized in Decision No. 62033 (November 2, 1999).

11. In Decision No. 61070 (August 7, 1998), the Commission authorized NWC to borrow \$620,000 from the Water Infrastructure Finance Authority ("WIFA") for the purpose of designing and constructing upgrades to its systems. From the time the Company started its improvement project until the current date, rising construction costs prevented the Company from finishing the

1 planned improvements.

2 12. The Company's request was driven by its inability to pay its obligations as they come
3 due. At the time it filed its application, the Company's accounts payable had grown to \$40,843,
4 primarily owed to its utility management company, Southwest Utility Management.

5 13. In early 2005, the Company had to expend approximately \$60,000 to relocate a
6 portion of its system to accommodate a Cochise County road-widening project. In addition, at about
7 the same time, its Well No. 3 went dry and NWC had to drill a new one at a cost of about \$30,000.

8 14. WIFA allowed NWC to use \$43,000 from its reserve fund, but requires the Company
9 to replenish the reserve fund with a \$1,218 monthly payment. The Company also needs additional
10 capital improvements to increase water storage capacity, to reduce excess water loss and to drill a
11 new well. Well No. 4 appears to be going dry, and the water table level is dropping in the area. The
12 Company estimates that it will need to borrow an additional \$600,000 to \$700,000 to make the
13 necessary improvements. It feels compelled to meet its current WIFA debt service obligations to be
14 eligible for additional loans to finance its capital improvement needs.

15 15. In addition to repaying the reserve fund, WIFA is requiring the Company to contribute
16 \$794 a month to a sinking fund for future repairs and maintenance. At the time of the application, the
17 Company was about three months delinquent in making the sinking fund payment.

18 16. The Company's financial statements show that it is operating at a loss. Staff's
19 analysis indicates that the Company is running an annualized cash flow deficit of \$25,973.

20 17. NWC is dependent on its management company, which has made advances to keep
21 the Company current with its other vendors.

22 18. The Company does not have the ability to raise additional equity or borrow more
23 funds to make other necessary capital improvements needed to reduce excess water loss and meet
24 peak demand.

25 19. According to Attorney General Opinion No. 71-17, interim or emergency rates are
26 proper when either all or any one of the following conditions occur: when sudden change brings
27 hardship to a Company; when the Company is insolvent; or when the condition of the Company is
28 such that its ability to maintain service pending a formal rate determination is in serious doubt.

20. Staff recommends that the Commission approve interim rates, through a monthly surcharge sufficient to generate additional revenues of \$30,225 on an annual basis. Staff believed that the Company's recommended increase will allow the Company to meet its on-going obligations and provide a small cushion. Staff's recommendation would not provide for any meaningful reduction of existing accounts payable, but should halt the growth in the accounts payable.

21. Staff recommends the following monthly surcharges:

5/8 x 3/4 inch meters	\$6.50
3/4 inch meters	\$9.75
1 inch meters	\$16.25
1 1/2 inch meters	\$32.50
2 inch meters	\$52.00
3 inch meters	\$97.50
4 inch meters	\$162.50
6 inch meters	\$325.00

22. Staff further recommends that:

(a) the Company file a permanent rate increase application no later than May 31, 2006, based on a test year ended December 31, 2005¹;

(b) the interim rates be subject to refund pending a final Decision in the permanent rate case; and

(c) the Company docket proof of a bond in the amount of \$10 prior to implementing the emergency rate increase authorized in this proceeding.

23. Cochise County's requirement that the Company relocate a portion of its system and need to drill a new well to replace the well that ran dry constitute a sudden change that caused hardship for the Company. The Company is unable to meet its on-going obligations and its ability to maintain service pending a formal rate application is in serious doubt.

24. Although NWC originally requested a larger increase, it accepted Staff's

¹ Staff had originally recommended a filing date of March 31, 2006, but revised its recommendation, to extend the date, at the hearing.

1 recommendations.

2 25. Because NWC has a long history of operations, we do not find a compelling need for
3 it to wait until 2006 to file a permanent rate case. We agree with Staff that it should file such
4 permanent rate case no later than May 31, 2006, but believe that it can file such case as soon as it is
5 prepared to do so. It appears that the Company will need a permanent rate increase to obtain
6 additional WIFA financing to complete its capital improvement project, and there may be good cause
7 to file sooner than recommended by Staff.

8 26. In *Residential Utility Consumer Office v. Arizona Corp. Com'n* (App. Div. 1 2001)
9 199 Ariz. 588, 20 P.3d 1169, the court agreed with the *Scate's* court's approval of the circumstances
10 in which interim rates may be considered and approved by the Commission. "*Scates* follows the
11 Attorney General's conclusion that, while the Commission has broad authority when setting rates, the
12 interim rate-making authority is limited to circumstances in which (1) an emergency exists; (2) a
13 bond is posted by the utility guaranteeing a refund to customers if the interim rates paid are higher
14 than the final rates determined by the Commission; and (3) the Commission undertakes to determine
15 final rates after a valuation of the utility's property. 118 Ariz. At 535, 578 P.2d at 616 (following the
16 conclusion drawn in Op. Att'y Gen 71-17)."³

17 27. Staff's recommendations above comply with the law concerning the Commission's
18 ability to implement interim rates, however, we believe that a bond of \$10 is inadequate for
19 "guaranteeing a refund to customers if the interim rates paid are higher than the final rates determined
20 by the Commission". We realize that the Company's poor financial condition is the reason that it
21 filed this application, but we cannot ignore the requirement that the customers are to be protected if
22 the interim rates are higher than the final rates. Accordingly, we will require a bond in the amount
23 \$1,500, which is approximately 5 percent of the increase in annual revenues allowed in this
24 emergency rate application.

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28 ² *Scates v. Arizona Corp. Comm'n*, 118 Ariz. 531, 578, P.2d 612.

³ *RUCO* at 591.

CONCLUSIONS OF LAW

1. NWC is a public service corporation pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-250 and 40-251.

2. The Commission has jurisdiction over NWC and the subject matter of the application.

3. Notice of the application was provided in accordance with the law.

4. NWC is facing an "emergency" within the definition set forth in Attorney General Opinion No. 71-17.

5. The emergency rate increase requested herein is just and reasonable on an interim basis and should be granted.

6. The recommendations set forth in Findings of Fact Nos. 22, 25 and 27 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that Naco Water Company, LLC shall file on or before July 29, 2005, a revised tariff that allows for the following interim surcharges:

5/8 x 3/4 inch meters	\$6.50
3/4 inch meters	\$9.75
1 inch meters	\$16.25
1 1/2 inch meters	\$32.50
2 inch meters	\$52.00
3 inch meters	\$97.50
4 inch meters	\$162.50
6 inch meters	\$325.00

IT IS FURTHER ORDERED that the surcharge approved herein shall be interim and subject to refund pending resolution of a permanent rate case.

IT IS FURTHER ORDERED that Naco Water Company shall file an application for a permanent rate increase as soon as it is able, but not later than May 31, 2006.

IT IS FURTHER ORDERED that the above rates and charges shall be effective for all service

1 provided on and after August 1, 2005.

2 IT IS FURTHER ORDERED that Naco Water Company, LLC shall post a bond in the
3 amount of \$1, 500 prior to the implementation of the interim rates.

4 IT IS FURTHER ORDERED that Naco Water Company, LLC shall notify its customers of
5 the rates authorized herein and their effective date within 15 days of the effective date of this Order.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
Secretary of the Arizona Corporation Commission, have
hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

JR:mj

1 SERVICE LIST FOR: NACO WATER COMPANY

2 DOCKET NO.: W-02860A-05-0184

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